

FOREIGN CLAIMS SETTLEMENT COMMISSION  
OF THE UNITED STATES  
WASHINGTON, D.C. 20579

IN THE MATTER OF THE CLAIM OF

SOUTHERN GRAVURE SERVICE, INC.

Under the International Claims Settlement  
Act of 1949, as amended

Claim No. CU -2249

Decision No. CU 2839

Counsel for claimant:

Fred R. Edney, Esq. and  
John L. Doyle, Esq.

PROPOSED DECISION

This claim against the Government of Cuba, under Title V of the International Claims Settlement Act of 1949, as amended, was presented by SOUTHERN GRAVURE SERVICE, INC., in the amount of \$19,661.68, based upon debts assertedly due from an enterprise nationalized by the Government of Cuba.

Under Title V of the International Claims Settlement Act of 1949 [78 Stat. 1110 (1964), 22 U.S.C. §§1643-1643k (1964), as amended, 79 Stat. 988 (1965)], the Commission is given jurisdiction over claims of nationals of the United States against the Government of Cuba. Section 503(a) of the Act provides that the Commission shall receive and determine in accordance with applicable substantive law, including international law, the amount and validity of claims by nationals of the United States against the Government of Cuba arising since January 1, 1959 for

losses resulting from the nationalization, expropriation, intervention or other taking of, or special measures directed against, property including any rights or interests therein owned wholly or partially, directly or indirectly at the time by nationals of the United States.

Section 503(a) of the Act provides:

The term 'property' means any property, right or interest including any leasehold interest, and debts owed by the Government of Cuba or by enterprises which have been nationalized, expropriated, intervened, or taken by the Government of Cuba and debts which are a charge on property which has been nationalized, expropriated, intervened, or taken by the Government of Cuba.

Section 502(1)(B) of the Act defines the term "national of the United States" as a corporation or other legal entity which is organized under the laws of the United States, or of any State, the District of Columbia, or the Commonwealth of Puerto Rico, if natural persons who are citizens of the United States own, directly or indirectly, 50 per centum or more of the outstanding capital stock or other beneficial interest of such corporation or entity.

Claimant corporation, by an authorized officer, has certified that it was organized in the State of Kentucky on November 19, 1946 and that at all times since then until presentation of this claim on April 27, 1967, claimant has been wholly-owned by Reynolds Metals Company. An officer of the Reynolds Metals Company has further certified that from at least October 24, 1960 until April 27, 1967, over 98.8% of the outstanding capital stock of the Reynolds Metals Company has been owned by United States nationals. Thus 1.2% of the shareholders are assumed to be nationals of countries other than the United States. The Commission holds that claimant is a national of the United States within the meaning of Section 502(1)(B) of the Act.

Claimant contends that between June 1959 and September 16, 1960, it sold certain engravings and cylinder bases to Reynolds International of Cuba, S.A. and that the records shows that as of September 30, 1960, \$15,084.26 was due it from that company. The record contains, inter alia, certified extracts from claimant's accounts receivable control ledger and supporting journal ticket. Claimant states that it has not received the above-mentioned funds.

The record further reflects that Reynolds International of Cuba, S. A. was listed in the Cuban Official Gazette as having been nationalized on October 24, 1960, pursuant to Cuban Law 851 (published in the Cuban Official

Gazette on July 7, 1960). Reynolds International of Cuba, S.A. does not qualify as a corporate "national of the United States" within the meaning of Section 502(1)(B) of the Act.

Accordingly, with respect to the accounts receivable accrued prior to October 24, 1960, the Commission finds that claimant's property was lost as a result of the nationalization of the property of Reynolds International of Cuba, S.A. on October 24, 1960. (See Claim of Kramer, Marx, Greenlee & Backus, Claim No. CU-0105, 25 FCSC Semiann. Rep. 62 [July-Dec. 1966].) In the absence of evidence to the contrary, the Commission concludes that claimant suffered a loss in the amount of \$15,084.26 on October 24, 1960, within the meaning of Title 7 of the Act.

Claimant also contends that as of December 31, 1960, an additional amount of \$4,577.42 was due claimant from Reynolds International of Cuba, S.A. However, claimant has failed to establish that any loss resulted from action of the Government of Cuba within the meaning of the Act. On the contrary, a photocopy of an invoice submitted by claimant indicates that the invoice, in the amount of \$4,577.42, was for "cancellation charges" based on costs of engravings made by claimant for Reynolds International of Cuba "which could not be shipped due to embargo restrictions."

The Regulations of the Commission provide:

The claimant shall be the moving party and shall have the burden of proof on all issues involved in the determination of his claim. (FCSC Reg., 45 C.F.R. §531.6(d) (Supp. 1967).)

As to this portion of the claim, the Commission finds that claimant has not met the burden of proof in that it has failed to establish ownership of rights and interests in property which was nationalized, expropriated, intervened or otherwise taken by the Government of Cuba. Thus, the Commission is constrained to deny this portion of the claim and it is hereby denied. The Commission deems it unnecessary to make determinations with respect to other elements of this portion of the claim.

The Commission has decided that in certification of losses on claims determined pursuant to Title V of the International Claims Settlement Act of 1949, as amended, interest should be included at the rate of 6% per annum from the date of loss to the date of settlement (See Claim of Lisle Corporation, Claim No. CU-0644).

Accordingly, the Commission concludes that the amount of the loss sustained by claimant shall be increased by interest thereon at the rate of 6% per annum from October 24, 1960, the date of loss, to the date on which provisions are made for the settlement thereof.

CERTIFICATION OF LOSS

The Commission certifies that SOUTHERN GRAVURE SERVICE, INC. suffered a loss, as a result of actions of the Government of Cuba, within the scope of Title V of the International Claims Settlement Act of 1949, as amended, in the amount of Fifteen Thousand Eighty-Four Dollars and Twenty-Six Cents (\$15,084.26) with interest thereon at 6% per annum from October 24, 1960 to the date of settlement.

Dated at Washington, D. C.  
and entered as the Proposed  
Decision of the Commission

AUG 21 1968

Leonard v. B. Sutton  
Leonard v. B. Sutton, Chairman

Theodore Jaffe  
Theodore Jaffe, Commissioner

Sidney J. Friedman  
Sidney J. Friedman, Commissioner

NOTICE: Pursuant to the Regulations of the Commission, if no objections are filed within 15 days after service or receipt of notice of this Proposed Decision, the decision will be entered as the Final Decision of the Commission upon the expiration of 30 days after such service or receipt of notice, unless the Commission otherwise orders. (FCSC Reg., 45 C.F.R. 531.5(e) and (g) as amended, 32 Fed. Reg. 412-13 (1967).)

The statute does not provide for the payment of claims against the Government of Cuba. Provision is only made for the determination by the Commission of the validity and amounts of such claims. Section 501 of the statute specifically precludes any authorization for appropriations for payment of these claims. The Commission is required to certify its findings to the Secretary of State for possible use in future negotiations with the Government of Cuba.